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IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.294 of 2004

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Swapan Kumar Pal

.... Appellant

Versus

The State Of Bihar

.... Respondent

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with

Criminal Appeal (SJ) No.396 of 2004

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Tapan Kumar Pal

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance:
(In both the appeals)
For the Appellants : Mr. Gautam Bose,Sr.Advocate
& Ms Ratna Das and Ms S.M.Ghosh

For the Respondents -State
(In both the appeals) : Mr. Ashwini Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE MANDHATA SINGH
ORAL ORDER

9 24-04-2012 I.A. No. 615 of 2012 of Criminal Appeal No. 294 of 2004 and I.A.No. 616 of 2012 of Criminal Appeal No. 396 of 2004 have been filed by both the appellants praying therein to set aside and expunge the finding of conviction and sentence passed against them in Sessions Trial no. 828/48 of 1993/01.

This case is taken as one of the exceptions in which direction of the Supreme Court prevails.

Appellants Swapan Kumar Pal of Criminal Appeal No.294 of 2004 and Tapan Kumar Pal of Criminal Appeal No.396

of 2004 are full brothers of Jyotasana Dey wife of Durga Shankar Dey. Jyotasana Dey is petitioner of Special Leave to Appeal (Civil) No. 29572/08. Durga Shankar Dey and others were respondents of that case.

Really matrimonial dispute was there in between the wife and husband that resulted into several cases including cases fixing criminal liability. They agreed there to withdraw all the civil and criminal cases filed on their behalf or on behalf of their relations against them or their relations after settlement of their differences. Really marriage of the parties was agreed to be dissolved.

Both the appeals are filed against the judgment and order of conviction and sentence recorded by the Fast Track Court No. III at Patna in Sessions Trial no. 828/48 of 1993/2001 dated 14.5.2004. Conviction is for the offence under sections 307/34 and 452 of the Indian Penal Code.

Reason behind observing this case as one of the exceptions is that the offence for which appellants are convicted is for non-compoudable offences and withdrawal is possible by Public Prosecutor or Assistant Public Prosecutor incharge of the case but there is no direction of the Supreme Court to Public Prosecutor or Assistant Public Prosecutor and they are bound to

follow the direction of the State Government only.

Mrinal Basu Roy is informant of the case, admittedly one of husband's relations has filed this withdrawal petition seeking disposal of the case on the basis of withdrawal under the direction of Supreme Court. Under the discussed circumstance, prayer made by the informant is allowed.

The case is decided in terms of withdrawal. In result, these appeals are allowed and judgment and order of conviction and sentence dated 14.5.2004 passed in Sessions Trial Case no.828/48 of 1993/2001 is set aside, appellants are acquitted of the charges leveled against them, discharged from the liabilities of bail bonds and set at liberty.

I.A.No. 615 of 2012 of Criminal Appeal No. 294 of 2004 and I.A. no. 616 of 2012 of Criminal Appeal No. 396 of 2004 stand disposed of.

(Mandhata Singh, J)

A.I./-